THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 20642 of 1998

Oral order:

The petitioner-workman, has filed this writ petition, assailing the award dated 10.09.1997, passed by the Labour Court-II, Hyderabad, in I.D. No. 59 of 1993, to the extent it denied backwages to him, as being illegal and arbitrary.

None appeared for the petitioner. Heard the learned Standing Counsel for the respondents-APSRTC.

Serious allegation of attempt to commit theft of scrap of broken springs and blades, is made against the petitioner. The allegation made against the petitioner stood proved in the enquiry. Based on the findings in the enquiry report, the respondent-authorities imposed punishment of removal from service. The Labour Court, though upheld the charges, the fact remains, to give opportunity to the petitioner to reform himself, has taken a lenient view, and modified the punishment of removal to that of reinstatement into service with continuity of service, notional increments, but without backwages.

The respondents though filed counter contending that since the charge of attempting to commit theft of scrap of broken springs and blades stood proved in the enquiry, and as per Regulation 9(1) of APSRTC Employees (CC &A) Regulations, 1967, the petitioner has to be dismissed, unfortunately, the respondents have not filed any writ petition questioning the award of the Labour Court, directing reinstatement of the petitioner with continuity of service and notional increments, and on the other hand, they have implemented the award of the Labour Court. The respondents having not questioned the award, and they having implemented the same, cannot assail the award of the Labour Court, by filing counter.

Given the nature of proved charge, I am of the considered opinion that the Labour Court was too considerate and compassionate to the petitioner. Since the Labour Court, has already shown much indulgence to the petitioner and directed his reinstatement with continuity of service and notional increments, no interference is warranted therewith, and more so when the apex Court in the apex Court in **Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane**[1], held that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the appellate tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal.

Grant of backwages, depends upon facts and circumstances of each case, and the person claiming backwages has to prove that he was without employment from the date of his removal from service till he was directed to be reinstated. Be that as it may, backwages do not follow as a result of the order of removal or termination being set aside. Grant of backwages is not automatic or mechanical (See **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey**[2]**)**. It is not a case where the punishment of removal passed by the disciplinary authority against the petitioner was set aside by the Labour Court on account of any procedural lapses committed by the enquiry officer in the conduct of the enquiry or that the enquiry is fraught with illegalities or that the disciplinary authority or the appellate authority had passed orders in violation of the principles of natural justice, but the Labour Court has set aside the order of removal passed by the respondent-authorities, and ordered his reinstatement into service on the ground that the punishment imposed was disproportionate to the proved misconduct.

In the above view of the matter, I find no merit in the writ petition,

and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Dated: 29th August, 2007
KSR

---

[1] (2005) 3 SCC 254

[2] (2006) 1 SCC 479